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REPORTS

NOTES OF THE WEEK

Proving Previous Convictions: the Magistrates' Courts Act, 1957, s. 3

It is important for defendants, and for their solicitors, to appreciate the effect of s. 3 of the Magistrates' Courts Act, 1957. This provides that where, in a magistrates' court other than a juvenile court, a person is convicted of a summary offence and it is proved to the court that a notice in the prescribed form has been duly served on that person specifying any alleged previous conviction of him of a summary offence proposed to be brought to the notice of the court in the event of his conviction of the offence charged, *and the accused is not present in person before the court,* the court may take account of any such previous conviction so specified as if the accused had appeared and admitted it.

We call attention to the fact that the section makes no provision for the defendant to dispute the correctness of the notice except by his appearing in court to do so. The Magistrates' Courts Rules, 1957, provide that the notice shall be in the form shown in form 3 in the schedule to those rules, or a form to the like effect. Form 3 gives the defendant notice of the effect of s. 3 set out above and leaves room for setting out details of the convictions to be specified. It is to be signed by someone for the chief constable and after the space for the signature is a note that a defendant who does not intend to appear in person at the hearing and who disputes any of the specified convictions, or any details concerning them, *should immediately notify the chief constable* so that further inquiries can be made. There follows thereafter the note "Nothing in this notice limits in any way your right to appear in person on the date fixed for the hearing and to dispute any conviction alleged against you."

What defendants and their solicitors must realize is that, prior to the hearing and conviction of the new offence *the court* is not aware of the notice of previous convictions and is not concerned with it, and that unless the defendant intends to appear in person to dispute the correctness of the notice any communication about it should be sent, as stated in the notice, to the chief constable. We emphasize this because we are aware of at least one case in which a solicitor wrote about the matter, on behalf of his client, to the clerk of the court instead of to the chief constable.

Diabetes and Driving

The facts in *R.* v. *Wickins* (*The Times,* July 15) were quite unusual. A man who was suffering from diabetes, but was at that time ignorant of the fact, consumed what was to him a normal amount of beer and became incapable of exercising proper control of his car. At quarter sessions he pleaded guilty to driving while under the influence of drink or a drug, and the learned recorder felt himself bound by the authorities to hold that the defendant must be disqualified for a year.

On appeal, the Court of Criminal Appeal removed the disqualification, holding that this was a case in which a court could properly hold that there was a special reason relating to the offence itself. The defendant would not have been affected by the beer if it had not been for the diabetes, and there would have been no offence committed.

It is perfectly true that a man may be suffering from diabetes without knowing it, and without being aware of anything wrong, except a feeling of being not quite so well as he had been accustomed to feel. The effect of diet upon his condition does not occur to him, and if he is used to drinking beer in moderation he would naturally make no change in his habits. If the disease becomes worse the effect of beer becomes pronounced and he may easily be unfit to drive a car. In fact, there is one beer which is quite suitable for diabetics and pleasant to drink—but we must not advertise!

The point of *R.* v. *Wickins,* so far as the facts are concerned, was that the court was satisfied that the defendant did not know he was diabetic. Once a man is aware of the fact it is for him to take advice and follow it in respect of diet, possibly the use of insulin, and of the precautions to be observed so as to avoid any risk of driving a car while unfit.

Share the Road

The May, 1958, number of *Road Safety Notes* issued by the West Riding Constabulary has on its last page the motto " Share the Road." If one stops to think about this it is obvious that a very large proportion of accidents are due to selfishness on the road, to a desire to have more than cne's fair share of the use of the road at a particular time, and we consider that this is a most excellent motto for all road users.

In the same number is an article, by a police constable who is an instructor at the West Riding Constabulary Driving School, on safe driving classes. These were started as " learner driver " classes, but drivers with more experience showed so much interest in them that their title was changed. Their value is considerable. Not only do they provide an opportunity for what we may call positive instruction by the lecturer on particular points of driving but also they give, in the question period which follows, the chance to those attending to ask questions about matters which are not clear to them and to the instructor to correct mistaken ideas which are disclosed by some of the questions.

The instruction covers nearly every aspect of driving and includes an intensive study of the Highway Code. Those who take the trouble to attend these classes must be anxious to improve their standard of driving, and every one who does this and absorbs the principles of safe driving must add to the safety of himself and of other road users. As the article concludes, " the efforts of Road Safety Committees in organizing the classes will pay rich dividends."

Pedestrian-controlled Zebra Crossing

Zebra crossings, properly (and this includes reasonably) used by all road users are an asset. They reduce the number of people crossing the road haphazardly at odd places, they give warning to the driver that he may expect, and must be prepared to stop for, people crossing at that point and they give pedestrians some feeling of security which motorists should not destroy.

The proposal to have pedestrian controlled zebras has been reported in the press and it seems that the Minister of Transport intends to make experiments with such crossings in certain places before there is any question of their general use. As we understand them these " controlled zebras " are not to show any flashing signal to warn motorists to stop for pedestrians on the crossing until a pedestrian wishing to cross has pressed a button which is in fact a switch to set the beacons flashing. There will be first, for the pedestrian, a signal " wait " and then a green light to indicate that it should be all right for him to cross. There is to be a modified form of marking to distinguish these crossings from the uncontrolled zebras.

Two points occur to us on this proposal. The first is that the green light " inviting " pedestrians to cross means that the motorist must treat the flashing beacon, at these crossings, as a red light requiring him to stop unless, when they start to flash, he is so close that it is not possible for him to stop safely. The second is that pedestrians must be careful to distinguish these crossings from the uncontrolled ones and not to step on to them without first pressing the button and getting the green light.

Only an experiment can show whether such crossings will add to road safety.

Warning Another Driver as " Obstructing the Police "

The question of what offence, if any, is committed by persons who seek to help drivers to avoid being caught exceeding a speed limit has been considered by the courts on more than one occasion. There are two cases which are most frequently referred to in this connexion, *Bastable* v. *Little* (1907) 71 J.P. 52 and *Betts* v. *Stevens* (1910) 73 J.P. 486. In the former it was held that to warn someone who could not be shown to be then committing any offence that he was approaching a speed trap was not to obstruct a police officer in the execution of his duty. In the latter *Bastable* v. *Little* was distinguished and it was held that it is such an obstruction, when a driver is already exceeding a speed limit, to warn him that he is entering a stretch of road where evidence of his offence is likely to be obtained. Another case, dealing with obstruction of the police by a warning given to the licensee of a public house that police were outside his premises was concerned with factors not present in the speed cases. This is *Hinchcliffe* v. *Sheldon* (1956) 120 J.P. 13; [1955] 3 All E.R. 406.

There is a report in the *Cheshire Observer* of June 28 in which it is reported that a car driver overtook a police car which was " tailing " a heavy lorry and then overtook the lorry and constantly flashed his brake light until the lorry slowed down.

The police officer's evidence was that when he was first following the lorry its speed varied between 32 and 36 miles an hour over a distance of 2-10ths of a mile. He said, when questioned by the defendant's advocate, that he had not stopped the lorry because he had not carried on for the distance of 5-10ths of a mile, it being a direction of the chief constable that speeds had to be checked for not less than that distance before a case was brought to court. Answering a question " You are satisfied no offence was committed by the lorry driver ? " the police officer replied " Quite satisfied." On this the advocate submitted that he had no case to answer. His submission was upheld and the case was dismissed.

The police seem not to have been represented in this case. If they had been it might have been argued that on the police officer's evidence that the lorry, for 2-10ths of a mile, was travelling at a speed of between 32 and 36 miles per hour the case came within *Betts v. Stevens, supra,* rather than within *Bastable* v. *Little, supra;* but as the officer answered that he was satisfied that no offence had been committed by the lorry driver it is not surprising that the bench accepted the prosecution's view on this point and dismissed the case against the defendant.

No Carrier's Licence

There is a report in the *News Chronicle* of July 8 of the conviction of a man, who was fined £1, for carrying his double-bass in a goods van without having a carrier's licence authorizing him to carry goods. The facts as given are that the defendant was taking the instrument home in his van after playing in a band at Buxton. It is not stated whether he played as an amateur or as a professional musician and this seems to us to make all the difference in this case. The Road and Rail Traffic Act, 1933, s. 1, makes it unlawful to use a goods vehicle on a road for the carriage of goods (*a*) *for hire or reward* (*b*) *for or in connexion with any trade or business carried on by him,* except under a licence, but unless condition (*a*) or (*b*) is satisfied there is no offence. If, therefore, an amateur musician carries his instrument in his own goods vehicle there can be no question of his carrying it either for hire or reward or for or in connexion with any trade or business carried on by him.

The defendant in the case in question did not, according to the report, take the point that he was playing as an

amateur but claimed that carrying his musical instrument was tantamount to an author carrying his fountain pen or a policeman his truncheon. He submitted that his double-bass was not "goods" but was a personal belonging.

As we have stated the court found the offence proved and fined him £1.

Outstanding Charges

When a man who lives by crimes of dishonesty is brought to trial he is generally anxious to clear up everything that can be proved against him, so that when he is sentenced he will be in no danger of subsequent proceedings for other offences. Often he volunteers to tell the police all that he can remember, and then a list can be made out and handed in to the court after he is convicted. He is then asked if he admits each charge and wishes to have it taken into consideration. Sometimes the list of offences is so long that it is surprising that the offender can remember them all. However, in some of these instances the police have a record of crimes reported, many of which they suspect to have been committed by the same man, and with the ready co-operation of their prisoner they can ascertain which are to be attributed to him.

In cases of embezzlement and similar offences by clerks or servants the practice is to prefer a few specific charges and if the accused is convicted to inform the court of the number of items and the total defalcation, and here again the defendant is asked if he admits the amount. It would obviously be a waste of time to prove every invidivual charge when all the facts are admitted.

The number of outstanding charges admitted is often large, but we do not think we have heard of one to equal that revealed in a case at the recent Cambridgeshire quarter sessions. A man was indicted on three counts of embezzlement and three of falsification of accounts, involving a total of £48, to which he pleaded guilty. He asked to have 745 other cases of embezzlement taken into consideration, involving a total sum of £2,000. He was sentenced to three years' imprisonment on each of three counts, the sentences to run concurrently.

Fortunately it is not necessary to read out in court the details of every charge which it is said that the prisoner wishes to have taken into consideration. He must have been supplied with the detailed list and if in court he admits having had it and also admits the charges, that suffices. How weary a job it would have been if it had been necessary to put each charge separately, and what a time it would have taken!

A Question of Time Limit

The *Cheshire Observer* of June 28 contained a report of a case in which it was said that a charge of indecent assault brought against a 15 years old boy was dismissed by justices because the alleged offence took place more than six months before. The girl involved was 14 years of age.

Although there is no general limitation of time for instituting proceedings in respect of an indictable offence, there are certain statutory exceptions. The point here, however, seems to have been that summary trial had been begun, and that subsequently, when the girl gave evidence, she gave the date of the alleged offence much earlier than that originally stated, and more than six months before the proceedings were begun. The court evidently had in mind s. 14 (3) of the Children and Young Persons Act, 1933, which is sometimes overlooked, and had no alternative but to dismiss the case. Committal for trial was out of the question because of s. 24 of the Magistrates' Courts Act, 1952.

Reform or Deterrence?

There is a growing feeling among the public that rather too much emphasis is laid upon the reform of offenders and rather too little upon the protection of the public by deterrent punishment. The public is not averse from the idea that reform should be one of the aims of penal administration, but it asks that the protection of the public should come first. It is the difficult task of those who, in the courts decide questions of sentence, and of those who are responsible for policy in the administration of penal institutions, to balance the claims of reform and deterrence.

Speaking at the Mansion House on July 9, the Lord Chief Justice said that the function of the criminal law was deterrence not reform. After referring to the great increase of crime, and inquiry into its causes, he said he believed the causes were the same as in the days of the Old Testament in which there were plenty of cases. The function of the criminal law was deterrence. As law, it was not concerned with the reform of the criminal; that was a matter for persons and societies, who, to their honour, were trying to do something about it. Judges were concerned with the protection of the public and must have regard to the interests of the victim of crime as well as of the criminal.

These are grave words, but Lord Goddard has shown over and over again that in appropriate cases he is as ready as any Judge to use probation and afford the means by which reform can be applied. The emphasis is upon the duty of the courts to put first the interests of the public. If they conflict with the interests of the offender, it is the offender who ought to suffer.

The statute law does concern itself with the reform of offenders, as its provisions have shown by their direct references to it and by the establishment of the probation system, now dealt with in a statute whose title is the Criminal Justice Act. The right use of these provisions and the probation service is a question for the courts. The words of the Lord Chief Justice must not go unheeded.

"Authority to Prosecute"

Arising from a "contributed" article appearing under this heading, a correspondent, who himself is a town clerk and not a solicitor, has questioned the point made in the article that the town clerk of a chartered borough, although unadmitted, has a right at common law in any court in which his corporation is engaged as a party.

Our learned contributor (himself a solicitor) points out he only made the point tentatively, and has never been able to find legal authority for his proposition that an ancient chartered corporation is just as much a person known to the common law as is a human being, and that the corporation may exercise the usual rights of a litigant to appear before the Queen's courts in person, through their mouthpiece, their town clerk. In the last century, when unadmitted town clerks were more common than they are today, the right to appear in the High Court was in fact exercised on a few occasions.

We would welcome the views of readers upon this.

Escapes

Figures about the increasing number of escapes from penal and mental institutions in recent years have caused disquiet and even alarm among the public. The actual number of persons unlawfully at large may appear small, especially if compared with the number who do not attempt to escape, but that is no ground upon which to base any arguments. The fact that hundreds

of men are secure in a prison is small consolation to people living near when they learn that one, possibly described as dangerous, has escaped. The same applies to mental institutions to a greater or less degree, depending on the nature of the mental disorder and its manifestations.

The questions asked are whether there is too much freedom of movement and action within walls, whether staffs are adequate and whether the official attitude is a little too undisturbed. We do not know the answers to these questions, and we certainly do not impute blame to any particular persons or institutions where matters are likely to be the subject of searching inquiry. What we feel is that there should be a general survey of measures and policies, and that all who can make practical suggestions including staff of various grades, should be invited to make their contributions.

POLICE AND LIBERTY

By FRANK ELMES

In an essay on John Stuart Mill, Bertrand Russell writes* "It is curious that Mill makes very little mention of the police as a danger to liberty. In our days they are its worst enemy in most civilized countries." Earlier in the essay the American F.B.I. and tyranny in Russia are given dishonourable mention and a little later our own laws on obscene literature are linked with the actions of "some ignorant policeman." It seems a fair deduction that Lord Russell had British police in mind as well as others when he wrote "in most civilized countries."

Lord Russell is accustomed to using words with as much precision as language is capable of. Yet, in the context, it is not possible to be quite certain that the "police" means "the civil officers employed to preserve order" and not "the system of regulations of a town, district or country for the preservation of order and the enforcement of law." The distinction is, of course, of great importance. Police officers of all countries necessarily work within the system of law enforcement which has been adopted by the State. It is only when the system confers great power, or permits the exercise of a very wide discretion, that police officers can affect liberty by action which they, the police officers themselves, initiate and for which they carry complete responsibility. Lord Russell plainly thinks this is the situation with the F.B.I. in relation to immigration. He writes "The F.B.I. which has only the level of education to be expected among policemen, considers itself competent to withhold visas from the most learned men in Europe on grounds which every person capable of understanding the matters at issue knows to be absurd." Whether the F.B.I. does consider itself competent to withhold visas from learned men, or whether it is merely making the best it can of severely restrictive laws, does not fall to be decided here. Russell's assumption that the decisions are the unfettered responsibility of police officers at least serves as an illustration of a situation in which police officers, by abusing a too wide discretion conferred by an insufficiently vigilant, or possibly a frightened government, have affected liberty.

Liberty is one of that class of well used words which mean just what a person using them intends them to mean. Democracy is of the same genus. No responsible lover of liberty really thinks of liberty as being analagous to freedom to do what one wants. From undisputed realms of criminal offences, such as murder, in which there is no exponent of liberty brave enough to say that the liberty of the individual to murder should triumph over the less violent but much cherished liberty to remain alive, we move through various gradations of opinion until the really difficult moral issues are reached; issues in which even freedom of thought may be called into question. It is in cases where police action tangles with these moral issues that police officers may find themselves labelled enemies of liberty.

In Britain we have plenty of laws roaming the disputed fringe. Gaming and betting, intoxicating liquor, homosexuality, attempted suicide, prostitution, obscene literature and exhibitions, and Sunday observance are all matters which the law touches and over which controversies rage. Even road traffic law is not free from impeachment on the grounds of interference with liberty. Plenty of motorists feel they should be free to park where they like and, at the same time, free to move unimpeded along the roads. Pedestrians feel they should be free to cross roads when and at any point they wish. Quite frequently in arguments centred around liberty it is forgotten that two liberties may be quite incompatible and that a modification of both is the only solution. It is high time that liberty was redefined, perhaps as "freedom to live in accordance with one's wishes and desires, subject to modification in the common good where other individuals are affected." Liberty is as dangerous a word as democracy in its present state, appealing as it does to the emotions, but quite defying all attempts to secure for it a common, acceptable meaning.

Those concerned with British policing need, from time to time, stimuli to self examination and heart searching. Is British policing an enemy to liberty? Are British police officers so performing their duties as to become, of themselves, enemies of liberty?

Theoretically there is no question of a police officer in Britain infringing the liberty of the subject without the possibility of being called to account by the civil or criminal courts. In other words, all actions of police officers which are unlawful are as likely to be subject to scrutiny by the judiciary as those of any other person, or group of persons. As police officers are given surprisingly small extra power not possessed by the ordinary citizen, the effect is that more wrongdoers escape detection than otherwise would be the case. It is a price the nation has always been willing to pay. Fortunately members of the public co-operate for the most part so that the British system works despite lack of power behind police action. Take, for example, what occurs when a dangerous criminal is at large. Police may cordon an area and question every person who passes through. They have no power to do this, yet it is a complete rarity for a liberty loving member of the public to say "I do not wish to talk to you and I intend to go on my way." A person with nothing to hide, behaving in that way in such a situation, would be condemned by most people as anti-social, probably with justice.

Quite apart from theory, which is favourable, it seems that comparatively few positive actions of British policemen represent a threat to liberty. Much more dangerous in this respect

* *Portraits from Memory*. Bertrand Russell. Allen & Unwin.

is selective action, or no action at all, in the face of infringements of the law. There is a dilemma here which is serious. Necessarily there are many breaches of the law which do not warrant court action. There is no alternative to allowing the police some discretion in what they should or should not prosecute. Almost all of this discretion falls to be exercised in the disputed fringe offences and it is unfortunate that in some police districts offences are tolerated which, in others, are subject to prosecution. Thus, although liberty has not been seriously infringed in either case (it can be argued that liberty to live free from the nuisance of offences by other people is destroyed by police inaction), the police of the districts which prosecute are liable to be condemned as repressive simply by comparison with their laxer colleagues.

Granted there is no alternative to allowing discretion to police officers who have to decide prosecutions; or, put another way, that it is not practicable to insist that police prosecute all offences in which evidence of commission is available; is there any additional safeguard to liberty which can be invoked? Something apart from reminding police officers of their responsibilities is needed. In fact, a good deal of police training is directed to inculcating a correctly detached, professional approach to law enforcement, and police officers who fall below the standard set seldom do so out of ignorance of the principles involved. Internal checks seem reasonably satisfactory and external supervision difficult without interfering with the independence of police in relation to the government of the day. Possibly the numbers and scope of the Home Office inspectorate could be enlarged beneficially and without disturbing the principles on which British policing is based. Parliament itself could take a greater interest in the working of the criminal law than it does. Much of our difficulty seems to stem from the shortage of Parliamentary time under present procedure. Amendments to the law, generally agreed to be desirable, wait sometimes for years before an opportunity arises for Parliament to carry them into effect. There is a regrettable tendency for governments to delay until an incident occurs which, justifiably or not, excites public attention, and then to set up a Committee of Inquiry to deal with a particular aspect of law or police procedure. A more satisfactory arrangement, though there may be difficulties, would appear to be a Criminal Law Sub-Committee of Parliament whose task would be:

(*a*) to watch the working of the criminal law, the judiciary and the police, in the light of events and changing public opinion;

(*b*) to recommend to Parliament alterations in law or procedure which seem to the sub-committee to be desirable, including recommendations to repeal law which has become obsolete.

Despite variations in definition British people value highly "liberty" and "democracy" as generally interpreted by the British. Philosophers and others can bring pressure to bear in such ways as may be open to them but, in the last resort, only the elected representatives of the people can ensure that these things, representing a way of life, are maintained.

COUNCIL HOUSES—TENANTS OR LICENSEES?

By H. A. SARGANT, *Assistant Solicitor, Metropolitan Borough of Wandsworth*

For many years past it has been the duty of every local authority to consider housing conditions and the need to provide further housing accommodation in its district. The Housing Act, 1957, has followed previous Housing Acts in this respect and has continued to place this duty on local authorities. Because of post-war conditions, housing shortage has become acute and in consequence people have looked to local authorities to make good the deficiency. Much of this has been done under part V of the Housing Act, 1936, and, no doubt, it will continue to be done now under the Act of 1957.

It is probably true to say that local authorities are now the biggest landlords in the country; it is desirable, therefore, to consider the legal status of persons housed by them and the writer proposes to examine, in detail, the basis upon which persons occupy council houses and to try to ascertain what authority, if any, exists for the proposition that they are council tenants.

For the purpose of this inquiry it is unnecessary to do more than refer briefly to ss. 91, 92, and 96 and to state that they deal respectively with the duty to provide, the mode of provision, and the power to acquire land for housing accommodation.

When, therefore, a local authority has acquired or appropriated land for the purpose of providing housing accommodation, it may deal with such houses either under s. 104 or under s. 111.

Section 104 is relatively simple, in so far as it enacts that a local authority may, with the consent of the Minister, sell or lease any houses—this is subs (1). The Minister can under subs. (2) give consent generally to all or any local authorities, but this consent may be subject to any conditions he thinks expedient. In other words, the power to sell or lease cannot be exercised until the Minister has approved an application by the local authority to dispose of houses individually or under a general authority. Thus, it is submitted, under this section even a weekly letting of a house requires the Minister's consent. In contrast, however, the Local Government Act, 1933, and the London Government Act, 1939, both permit lettings of surplus land up to a period of seven years without the Minister's consent. It is thought relevant to mention this only because it emphasizes the complete control exercised by the Minister where houses are let under the Housing Act.

In general, however, local authorities prefer to rely on the powers of management and inspection vested in them by s. 111 when "letting" their houses. Because of the importance of this section, it is here set out in full, viz:

"MANAGEMENT, ETC., OF LOCAL AUTHORITY'S HOUSES

111. (1) The general management, regulation, and control of houses provided by a local authority under this part of this Act shall be vested in and exercised by the authority, and the authority may make such reasonable charges for the tenancy or occupation of the houses as they may determine.

(2) Without prejudice to the provisions of the foregoing subsection, any such house shall be at all times open to inspection by the local authority of the district in which it is situate, or by any officer duly authorized by them."

It should be made clear at the outset that in exercising these powers local authorities do not, in fact, seek the Minister's consent to let their houses, although having regard to s. 104 it might be thought that such consent ought to be

obtained if it is considered that such "lettings" constitute a tenancy.

In the writer's view, however, the provisions of subs. (1) are such that they make it extremely doubtful whether a local authority can grant a tenancy having regard to the words "The general management, regulation, and control of houses . . . shall be vested in and exercised by the authority . . ." Since it is axiomatic that the word "shall" in a statute has mandatory effect, it follows that a local authority cannot permit any other person to exercise control over its houses. In relation to such control it will be remembered that a principle of the grant of a tenancy is the right to exclusive possession and, therefore, it could be argued that the grant of a tenancy would prevent a local authority from exercising its statutory control. In this respect it is now necessary to refer to subs. 2, which is also mandatory in that it provides that a house "shall be at all times open to inspection by the local authority." There is not, as one would normally expect to find, a provision for giving the usual notice of intention to enter but it may, perhaps, be contended that this omission is consistent with continuous control, and inconsistent with the grant of the right of exclusive possession to a tenant.

This power of control, however, does not end with s. 111 and, if attention is now directed to s. 112 (1), it will be seen that:

> "(1) A local authority may make byelaws for the management use and regulation of houses provided by them."

Whatever view is taken of the legal effect of s. 111, it is undeniable that a power residing in a property owner to make byelaws for the management and use of his houses, which was conferred upon local authorities by s. 62 of the Housing of the Working Classes Act, 1890, and has been repeated with minor alterations in all the consolidating Acts, is an anomaly, as between landlord and tenant. On the other hand, this power to make byelaws ought not to be ignored; it seems reasonable to assume that the imposition of fines on occupiers for breaches of byelaws in respect of, for example, the wrongful keeping of animals or damage caused to houses, together with sundry other breaches, was the means of control intended by the legislature rather than the present method adopted by some local authorities of evicting tenants who fail persistently to comply with their conditions of letting. *Lumley* states at p. 3018 of the 12th edn. that the power has long been a dead letter, not having been used since 1901, but it is not the purpose here to pursue the reasons why the power has not been used.

It is, however, common practice for local authorities to regulate the use of their properties such as parks, libraries, markets, etc., by the use of byelaws and whether, in fact, they exercise the power conferred by s. 112 (1) in respect of council houses, it is clear that the use of such houses can be controlled in similar manner.

Turning now to the provisions for the recovery by local authorities of possession of their houses, these are contained in the two subsections comprising s. 158, which relate generally to their housing powers and not specifically to s. 111. The next point to which attention should be drawn is that "Nothing in the Rent Acts shall prevent possession being obtained" (subs. (1)) and it is also significant that possession may be obtained under the Small Tenements Recovery Act, 1838, whatever the value or rent (subs. (2)). Further, the procedure under the Act of 1838 is before justices who must give possession within not less than 21 days nor more than 30 days. It has in this connexion been suggested to the writer that the Act of 1838 is concerned with "tenancies" which have come to an end. It is true that s. 1 of the Act speaks of the "tenant," but the full phrase is "the term or interest of the tenant," and in the writer's submission this does not imply (at least of necessity) that there has been the relationship of landlord and tenant in the proper sense—with which it seems to him that the power of summary action in magistrates' courts is *prima facie*.

The picture is now complete and all that remains is to summarize the position.

The first question which requires to be decided is, in the writer's view, the relative positions of s. 104 and s. 111. On the one hand s. 104 undeniably gives local authorities a right to lease their houses, subject always to obtaining the Minister's consent. On the other hand, there is no doubt that local authorities, in fact, act under s. 111 and let their houses without the consent of the Minister—generally, it is true, on weekly tenancies. If it is conceded that this action is correct, then it may be asked in what circumstances does a local authority decide when it needs the Minister's consent? The answer appears to be "never," if such a position is once accepted, and accordingly s. 104, for the purpose of leasing, can be ignored.

Arising out of the first question, it follows that the next question is whether s. 111 enables local authorities to "lease" houses, *i.e.*, to grant leases. We have already seen that this section vests control of houses in, and requires it to be exercised by, the local authorities. It also gives them the power, without notice, at all times to enter such houses. Further, we have also seen that these houses may be controlled by byelaws. Again, it may be asked, are these provisions consistent with the power to grant tenancies?

In an effort to resolve this question, the writer has referred to *Hill & Redman's Law of Landlord & Tenant* (12th edn. at p. 11) which states:

> ". . . but the test of exclusive possession is not conclusive for the result of recent cases is that, although a person who is let into exclusive possession is *prima facie* to be considered a tenant, nevertheless he will not be held to be so if the circumstances negative any intention to create a tenancy. Further, a grant of exclusive possession may be only a licence and not a lease where the grantor has no power to grant a lease."

In the writer's view, s. 111 does not permit local authorities to give a right of exclusive possession and, if this view is accepted, then s. 104 falls neatly into place as the section for letting houses, and s. 111 merely enables local authorities to grant licences to occupy their houses. Once again, it has been suggested to the writer that his view is inconsistent with the cases in which local authorities have recovered possession—for example *Shelley* v. *London County Council* (1949) 113 J.P. 1; [1948] 2 All E.R. 898: *see*, for example, the opening sentences of Lord Porter's leading speech in the House of Lords, as well as other references to the occupier as having been a tenant, in the House and in the judgments of the Courts below. The writer's submission upon this is that the appellant was not concerned to prove or to disprove a "tenancy," properly so called, but to establish that his possession was protected by the Rent Restriction Acts. The arguments on the question of a tenancy were thus not before the House, and Lord Porter, amongst others, concentrated attention upon the powers of management. It is fully appreciated that, if the view advanced in this article is correct, the effect could be far reaching and decisions such as *Bathavon Rural District Council* v. *Carlile* (1958) 122 J.P. 240; [1958] 1 All E.R. 801 might then be open to challenge, but it is contended that this should not deter the argument.

THE PROBLEM OF THE EVICTED

[CONTRIBUTED]

Many local authorities of both tiers realize that a problem may face them when the effect of the Rent Act, 1957, is fully felt. Whether there will in fact be such a problem is a matter of conjecture: coloured no doubt by political persuasions, upon which we would not wish to join issue.

While it is impossible at this present time for anyone to forecast with certainty that there will be—shall we say—*x* number of evictions, it would be prudent no doubt for all local authorities to make some assessment of the situation likely to arise locally, and so estimate the possible demands upon their services. And that will raise again—indeed, has done already in some instances—the controversy about responsibility for the housing of evicted families.

The provision of permanent accommodation for the homeless is a function of housing authorities. The borough and district councils have a general duty under the Housing Act, 1957, s. 91, to provide for housing needs but no absolute duty in the sense that anyone without accommodation can go to them and say, in effect, " Give me a home."

The provision of temporary accommodation for the homeless is the function of county and county borough councils as welfare authorities. It can be said that the duty under the National Assistance Act, 1948, s. 21, is absolute in that anyone temporarily homeless by reason of circumstances which could not reasonably have been foreseen can go to the town or county hall and properly demand shelter.

Unhappily there are authorities at both county and county district level who are unmindful that there is implicitly a local government responsibility to provide for the homeless —and thus all too often the evicted family gets short shrift from each. All too many authorities probably shelter behind a narrow interpretation of the law and take advantage of the " gap " which the legislature has provided, to deny that there is any responsibility upon them in a particular case to help. Conditions greatly help such authorities. Many of them can show how impossible it is for provision to be made within an area already fully built-up, and remain evasively silent on the possibility of collaborating with a neighbouring authority. County borough councils alone seem capable of managing the problem—possibly because they cannot escape it.

The Minister of Health some 10 years ago, in the circular to local authorities on the National Assistance Act, 1948, said that temporary accommodation was primarily intended to provide temporary shelter for persons rendered homeless " as a result of such circumstances as fire, flood, or eviction." Admittedly the circular made it clear that a welfare authority's duty was not one of dealing with the inadequately housed, pointing to s. 21 (8) which expressly precludes the authority from using temporary accommodation for ordinary housing purposes, but the Minister was presumably to regret his express reference to cases of eviction. A year later in a letter to the County Councils Association the Minister sought to define the nature and extent of a county council's powers and duties in relation to evicted families: in most cases, the Minister pointed out, the need of evicted families for accommodation is one which could have been foreseen, and thus the responsibility for rehousing such families " rests with the housing committee of the county district authority."

In 1950 the local authority associations produced an agreed memorandum on accommodation for homeless families. The gist of it was this:

> " Both housing and welfare authorities have powers to provide this accommodation—if they can find the physical means of providing it; and public opinion will expect it to be provided by them when the alternative is to leave a family without shelter. Both authorities should therefore be ready to co-operate, to do their best, and to use any facilities which can be made available."

The extent to which local authorities have since co-operated is not really known. Many authorities took constructive action. Many more, no doubt, evaded the issue.

The Surrey county council, it is disclosed, recently considered whether they should make their temporary accommodation available for persons rendered homeless through eviction under the Rent Act. The county council decided not to do so. In reaching this conclusion the council say they were influenced by the fact that housing authorities have the necessary powers and have been assured of a substantial measure of financial assistance from the county council to provide " intermediate " accommodation, either by themselves individually or jointly in collaboration with other authorities.

Surrey, it seems, has given a great deal of thought to this sorely perplexing problem. Some 18 months or so ago a Working Party was set up within the county to consider ways and means of preventing the break-up of families, and the evicted family received almost as much attention as the problem family. It was a result of the recommendations of this Working Party that the county council decided to make grants to the county district authorities, under s. 126 of the Local Government Act, 1948, of up to one-third of the net annual loss on the running of intermediate accommodation.

What now ?

It seems that the Ministry of Housing and Local Government and the Ministry of Health are giving renewed consideration to the question, how best existing arrangements for dealing with the problems of homeless families can be improved. Discussions are to take place with the local authority associations, it is understood, on such matters as (*a*) on what lines improvements in existing practices and arrangements can best be achieved; (*b*) what further steps can be taken to ensure that the fullest use is made of the resources available to both housing and welfare authorities; (*c*) how any defects of co-operation between the authorities can be repaired; (*d*) whether further action needs to be taken on the recommendations in the Central Housing Advisory Committee's report on *Unsatisfactory Tenants*.

NOW TURN TO PAGE 1

Whenever the decision of justices is called in question in any superior court of common law by any process issued upon an *ex parte* application, the justices may file an affidavit setting forth the grounds of the decision and any material facts. (Review of Justices' Decisions Act, 1872, s. 2.) This procedure avoids making the justices parties to the appeal and so liable in costs.

MISCELLANEOUS INFORMATION

COUNTY BOROUGH OF SOUTH SHIELDS: CHIEF CONSTABLE'S REPORT FOR 1957

This force suffered 10 losses and had nine recruits during 1957. The final figures were 166 authorized and 154 actual strength. Seven applications were still pending at the end of the year. The special constabulary numbered 141. They patrol beats in the borough for short periods once a month and give valuable help to the regular force on special occasions when extra crowds have to be regulated.

Recorded crimes numbered 1,083, 92 more than in 1956. Eight hundred and twenty-six were detected. One hundred and twenty-nine adults and 147 juveniles were proceeded against. The numbers " responsible " for crimes are given as 362 adults and 464 juveniles. The chief constable regrets a rise of 30 in the number of sexual offences and expresses the opinion that in such cases leniency should never be shown in any case where the corruption of youth is involved. The public are thanked for their co-operation in reporting suspicious cases, which has led to several arrests. To those who would say " it is none of my business " the chief constable replies that the goodwill and support of the public are essential to the success of police investigations and that, in effect, the prevention and detection of crime is everybody's business. To those who fear that they may be wasting police time he says that a little time sometimes wasted is better than a lot of time spent on investigations which could have been saved by the early reporting of suspicious or unusual happenings.

Juveniles were responsible for 56·17 *per cent.* of detected crimes. It is suggested that the solution of the juvenile delinquency problem may be found not so much in improved methods of dealing with offenders as in the prevention of the development of offenders. South Shields adopted, on August 6, 1957, a juvenile liaison officer scheme which involves the appointment of a selected police officer with the special function of dealing with the prevention of juvenile crime. It is on lines similar to those of other such schemes which we have written about in the past.

Non-indictable offenders proceeded against totalled 872. There were a large number of cautions (2,475) including 723 for traffic offences. Fatal and injury accidents numbered 246, compared with 249 in 1956. It is estimated that 91 of the 246 were avoidable by drivers, and 149 by other persons. Six are described as unavoidable. In commenting on the parking problem in the town centre, which could easily lead to utter chaos, the chief constable gives the figures for vehicle registrations for 1946, 1956 and 1957 as follows: 2,200; 6,677 and 7,599.

EAST HAM PROBATION REPORT

In a short introduction to the report for 1957 of Mr. Ernest Osborn, senior probation officer for the county borough of East Ham, Dr. J. Stanley Thomas, chairman of the probation committee, says that this review of the work, written in the jubilee year of the probation system, might be described as a thesis on the national progress of probation since its inception.

After noting that there are now some 1,300 probation officers looking after some 50,000 men, women and children, Mr. Osborn refers to the progress in methods of procedure and case reporting, and the recognition of psychiatric treatment as an adjunct in dealing with some of the complex human problems. Like most interested observers he is gravely concerned at the continued lawlessness under present conditions in which social services have practically abolished abject poverty. In East Ham there was in 1957 a large increase in the number of juveniles appearing before the court, in the case of boys well over 50 *per cent.* Failure of parents in training and guidance of their children is a principal cause, and Mr. Osborn refers to an experiment in Perth, Western Australia, where parents of delinquent children are ordered to go to night school at least one night a week and on Saturdays to study parent craft taking the boy or girl with them. The basis of the scheme is that problem parents are a greater difficulty than problem children. Mr. Osborn finds a growing irresponsibility among all age groups especially in relation to work. Many of the young people constantly change their jobs and remain unskilled. In many cases parents show complete indifference to their child's welfare. Many of the young people enter into hire-purchase agreements which they are unable to keep up, and this fact leads to offences of dishonesty. He agrees with the view so often expressed that there is too much crime and violence shown on television.

Summing up his discussion of matrimonial troubles and those of young people, Mr. Osborn concludes that it remains a great problem that the combined efforts of our schools and improved social services are unable to counteract the fundamental influence of the indifferent home background. There is a special word of praise for the women police for their co-operation in preventive work.

There has been a slowing down of the rate at which marriages are breaking up completely. This, the report suggests, may be partly due to greater facilities for divorce which have led to the choice of a complete dissolution of the marriage in preference to a magistrates' order. Many of those who come to the magistrates' courts are found to have the roots of their trouble in money matters. Many husbands are quite oblivious of the fact that they spend too much on themselves and give their wives too little for housekeeping.

CITY OF LEICESTER: CHIEF CONSTABLE'S REPORT FOR 1957

It is reported that re-organization of the force in October, 1957, has led to decentralization of operational control for everyday tasks and an increase in supervisory ranks, bringing considerable improvement in the chances for promotion. The change has not, however, increased the proportion of supervisory ranks to constables above that which is common in the police service generally. At the end of the year there were 66 vacancies with an authorized establishment of 450. During the year there were 43 appointments and 22 losses of male officers, a net gain of 21. The establishment of women police was increased by seven to a total of 22.

There was a considerable increase in recorded crime. The 1957 figure was 2,808, and that for 1956 was 2,327. We have to go back to 1952 to find a total higher than that for 1957. Breaking offences increased from 403 in 1956 to 500 in 1957. The figures show that in 1957 juveniles were known to be responsible for 30·9 *per cent.* of recorded crime, whereas in 1947 the percentage was only 18·6. The only comfort from these figures is that the 1957 percentage is less than that for 1956 (37·9).

Traffic problems in Leicester are considerable. The chief constable regrets that it has been necessary to make increased efforts to enforce the law relating to unnecessary obstruction by motor-vehicles, but he writes that " the need for that activity in the centre of Leicester, however, must be manifest to everyone but the offender." He continues, " if it is left undone commercial life in the centre of the city will be seriously impeded, and the general public will eventually suffer inconvenience to an intolerable degree." The figures speak for themselves. Obstruction type prosecutions numbered 1,224 in 1957, against 556 in 1956. Speed prosecutions increased from 232 to 503, careless drivings from 289 to 394 and dangerous drivings from 15 to 24. It seems obvious that a great deal more police time must have been devoted to this work, but towards the end of the year it was felt that the results were justifying the effort. Amongst other things it was reported that the use of municipal car parks has trebled since April. It is a great pity that motorists need this sort of compulsion to make them behave reasonably in their use of the highway. With an increase in the number of vehicles which has now been approved it is hoped that all main roads will be kept under surveillance at peak traffic periods.

MIDDLESBROUGH PROBATION REPORT

In his report for 1957, Mr. Hugh Leslie, senior probation officer for the county borough of Middlesbrough, says he thought that in 1956 the peak had been reached in matrimonial work, but this has not proved the case. A new high level was reached in 1957 with 489 new cases—an increase of 13 *per cent.* on the previous year. Mr. Leslie considers it the most exhausting but also the most exhilarating work. For some unknown reason, he says, most people come to the probation office when they want a separation and seem very surprised when they are told that separation is not part of the function of the probation service but that efforts at conciliation can be attempted. In a great many cases they are prepared to agree to this process and many marriages have been saved and placed on a much firmer foundation through this initial contact with a probation office.

In fact there was an increase in practically all branches of the work of the probation officers. This was particularly noticeable in the figures for enquiries into home surroundings, the figures for 1956 and 1957 being 416 and 504 respectively. A record number were placed on probation by quarter sessions, and the results have been most satisfactory.

The rate of committals to approved schools showed a sharp rise equivalent to 70 *per cent.* Dealing with the question of residence in homes or hostels, Mr. Leslie writes: " It has been stated that too many cases are sent to homes or hostels where the appropriate treatment should have been a committal to approved school or borstal institution. In some areas this may be so but judging from the results shown this cannot be the case so far as Middlesbrough is concerned. Much of this success stems from

the care by which such cases are selected for this treatment by the justices and the selection of the hostel for the subject and not the subject for the hostel."

The report states that for some years past greater use has been made of the power to place under supervision a person who has been fined or ordered to pay other sums of money. In most cases the desired effect has been achieved, the offender has been spared from going to prison and the court has received the money.

MAGISTERIAL LAW IN PRACTICE

Evening News, London. April 9, 1958.

I OBJECT, SAYS THE ACTRESS

Fingerprinting "So Dreadful"

A pretty young actress, who had refused to let the police take her fingerprints because it "sounds so dreadful," changed her mind in the dock at West London to-day.

She did so after the magistrate, Sir John Cameron, told her that if she was still unwilling he could order it to be done.

Mary Claudette Taynton, aged 23, of Cromwell Road, South Kensington, was remanded on her own bail of £10 until April 18.

She was charged with stealing, at Edwardes Square, Kensington, a road sign, valued at £2, belonging to the royal borough of Kensington.

Refused

At the Station

P.C. Thomas Bruce said further inquiries were to be made about "persons not yet in custody."

Inspector Ronald Jeffrey, asking the magistrate to make an order for the actress's fingerprints to be taken, said she had refused them at the police station last night.

"I did not want it done," said the actress from the dock. "It sounds so dreadful, but I am willing if it is absolutely necessary."

The magistrate then assured her it was routine and added: "If you are unwilling, I shall have to make an order that it must be done."

The actress nodded as she left the court.

Under s. 40 of the Magistrates' Courts Act, 1952, where any person not less than 14 years old who has been taken into custody is charged with an offence before a magistrates' court, the court may, if it thinks fit, on the application of a police officer not below the rank of inspector, order the fingerprints of that person to be taken by a constable (subs. (1)).

The fingerprints may be taken in pursuance of the order either at the place where the court is sitting or at any place to which the person is remanded or committed in custody. Such reasonable force as may be necessary may be used (subs. (2)).

If the person is acquitted, or not committed for trial, or if the information against him is dismissed, the fingerprints and all copies and records of them must be destroyed (subs. (4)).

The section does not relate to a person appearing in answer to a summons, but only to a person arrested for an offence, either with or without a warrant.

A formal order should be drawn up and served on the defendant. A form is prescribed in form six of the Magistrates' Courts (Forms) Rules, 1952.

The provisions of s. 40 are in addition to those of any other enactment under which fingerprints may be taken (subs. (3)).

Under regulations, dated June 20, 1896, made by the Secretary of State under the Penal Servitude Act, 1891, for the measuring and photographing of criminal prisoners (S.R. & O., 1896, No. 762), in addition to measurements, photographs, and descriptions of scars and distinctive marks, fingerprints may be taken in prison (reg. 3). An untried prisoner cannot be photographed or measured or have his fingerprints taken in prison except by an order of the Secretary of State or upon a written application of a police superintendent approved by a justice, or, in the metropolitan police district, by the Commissioner or Assistant Commissioner of Police (reg. 4). If a prisoner refuses to allow his fingerprints to be taken, a reasonable degree of force may be used. In practice, if the prisoner does not object, the photographs and fingerprints of an untried person are taken by order of the governor of the prison, on the application of a chief constable or superintendent of police, without the approval of a Secretary of State or a justice. When an untried prisoner who has not been previously convicted has been photographed and measured under reg. 4 and has been discharged by the magistrates or acquitted upon his trial, all photographs (negatives and prints), fingerprints, and records of measurements are to be destroyed or handed over to the prisoner (reg. 5). *See Halsbury* (2nd edn.) vol. 26, paras. 379 and 380, and footnotes on p. 175.

The regulations continue in force by virtue of s. 54 of the Prison Act, 1952.

The Yorkshire Post. May 24, 1958.

WATER ON ROAD TURNED TO ICE

Magistrate to rule on 123 year old Act

From our Huddersfield staff

The Huddersfield stipendiary magistrate, Mr. L. M. Pugh, will announce his decision next Wednesday in a case in which a Bradford man, John Fergus (46) contractor's agent, Beech Grove, is summoned under a 123 year old Highways Act for laying matter —water, which turned to ice—on Manchester Road, Huddersfield, to the danger of people travelling on the road, and with obstructing free passage.

When the case was heard on May 2 it was stated that Fergus was in charge of excavations in Manchester Road from which water was being pumped. When the water froze there was a sheet of ice for 156 yds. and three vehicles, one of them a police car, skidded.

Yesterday, when legal submissions were made, the defending solicitor, Mr. R. Naylor, said: "What was laid on the road was water. It would not have mattered if it had turned into chocolate icing. It was due to an act of nature that it turned into ice. Nature does not conform to the law, and the fact that the water froze was no act of Fergus."

It is an offence under s. 72 of the Highway Act, 1872, to "lay any timber, stone, hay, straw, dung, manure, lime, soil, ashes, rubbish, or other matter or thing whatsoever upon such highway, to the injury of such highway, or to the injury, interruption, or personal danger of any person travelling thereon," punishable by a penalty not exceeding 40s. over and above the damages occasioned thereby.

It was reported on May 29 that the learned stipendiary magistrate in giving his judgment said that he could not accept the prosecution's argument that in putting water on the road, Mr. Fergus must be deemed to have intended putting ice on the road. He went on to say, "In cold weather people very often put water over pavements to wash them and the water, not surprisingly, turns to ice. It is extremely dangerous and it may well be it should be prohibited, and possibly it is under some other section, but in my opinion this section does not enable me to convict Mr. Fergus of an offence."

The Birmingham Post. February 27, 1958.

STIPENDIARY HEARS EVIDENCE IN POLICE CELL

Birmingham stipendiary (Mr. J. F. Milward) yesterday held a court in a cell at the Steelhouse Lane lock-up after being told that a prisoner had been violent in his cell during the night.

Thomas John Hannah (aged 44), a native of Belfast, and of no fixed address, lay on the floor of the cell handcuffed and covered with a blanket.

Hannah made a long and rambling statement to the magistrate and P.C. John Gregory gave evidence describing how Hannah had been seen in Coventry Road attempting to throw himself in front of vehicles.

When the stipendiary returned to his court room, Inspector Hamilton said that in view of all the circumstances, the police wished to withdraw the charge of attempted suicide which had been made against Hannah.

Section 4 (2) of the Magistrates' Courts Act, 1952, provides that "examining justices shall not be obliged to sit in open court." This enables an examining magistrate to inquire into an indictable offence in any convenient place, provided that the accused is present throughout the proceedings and that the other provisions of the Magistrates' Courts Act and Rules relating to proceedings preliminary to trial on indictment are complied with. (*See* under *Handcuffed Men at Bedside Court* at p. 13 of our 1956 volume.)

In *R.* v. *Katz* (1900) 64 J.P. 807, it was held that the deposition of a dying person taken by a magistrate at a hospital in the presence of the accused, all the requirements of s. 17 of the Indictable Offences Act, 1848 (now s. 4 of the Magistrates' Courts Act; 1952, and r. 5 of the Magistrates' Courts Rules, 1952) having been complied with, was admissible in evidence on the trial of the accused person for murder, although the requirements of

s. 6 of the Criminal Law Amendment Act, 1867 (now s. 41 of the Magistrates' Courts Act, 1952), had not been complied with.

In *R.* v. *Bros, ex parte Hardy* (1910) 74 J.P. 483, it was held that a magistrate before whom a person is charged with an indictable offence is bound in all cases to take the deposition of a witness who is dangerously ill, under s. 17 of the Indictable Offences Act, 1848 (now s. 4 of the Magistrates' Courts Act, 1952, and r. 5 of the Magistrates' Courts Rules, 1952) if it is practicable for him to do so, and it is not open to him to refuse on the ground that it is not expedient or to lay down a rule that he will only take such deposition if the case is one of murder or manslaughter and if an application in that behalf is made to him by a superior police officer. If it is not practicable for the magistrate to take the deposition under that section, it may be taken by another magistrate under s. 6 of the Criminal Law Amendment Act, 1867 (now s. 41 of the Magistrates' Courts Act, 1952).

PERSONALIA

APPOINTMENTS

Mr. J. C. D. Hartington, Q.C., the new county court Judge for Hampshire and the Isle of Wight, is also chairman of the Herefordshire quarter sessions. At the Midsummer court of sessions held at the Shirehall, Hereford, on July 7, last, the Lord Lieutenant of Herefordshire, the Right Honourable the Lord Cilcennin, P.C., moved the following resolution which was unanimously approved and adopted: "That this court expresses its pleasure and pride on learning that the chairman has been appointed a county court Judge, conveys to him sincere congratulations and hopes for a happy and successful tenure of that appointment and expresses the fervent desire that, notwithstanding his new duties and responsibilities, he will be able to continue to act as chairman of the Herefordshire court of quarter sessions, in which post his services are so highly valued."

Mr. H. G. Talbot and Mr. Nigel F. M. Robinson, the new chairman and deputy chairman, respectively, of Derbyshire quarter sessions, took office at the Midsummer sessions on June 24, last.

Mr. Francis Williams, Q.C., the recorder for Chester city, has been appointed honorary deputy chairman of Cheshire quarter sessions for five years from April 30, 1958.

Mr. P. V. Levens has been appointed town clerk of Tenby, Pembs., and will be taking up his position very shortly. Mr. Levens has been assistant solicitor to the borough of Grantham, Lincs., for the past 2½ years. He obtained his M.A. degree at Cambridge. He served his articles with the town clerk of Worcester and was admitted in 1938. For four years he was legal assistant to Butterworths, law publishers, and for one-and-a-half years was legal assistant to the South Wales Electricity Board. He was subsequently assistant solicitor to an urban district council in Liverpool where he remained two years before taking up his position at Grantham.

Mr. John Noel Martin, M.A. (Cantab.), L.A.M.T.P.I., deputy town clerk of Southampton, has been appointed town clerk and solicitor to Wandsworth metropolitan borough council.

Mr. J. B. McCooke, deputy town clerk of Halesowen, Worcs., has been promoted town clerk in succession to Mr. A. Basterfield, O.B.E., who is to retire in September, and who will receive the honorary freedom of the borough. Mr. McCooke served previously as assistant solicitor with Newcastle-under-Lyme, Staffs., and Cheltenham, Glos., corporations.

Mr. L. J. Hartley has been appointed clerk to Chard, Somt., rural district council, in succession to Mr. A. R. J. Dommett, who is to retire shortly. Mr. Hartley takes up his duties on November 1, next. He is at present deputy town clerk to the county borough council of West Hartlepool, Co. Durham. His previous appointments were as follows: 1948–1951, assistant solicitor to Darlington county borough council; 1951–1954, senior solicitor at Darlington; 1954 until his present appointment, assistant town clerk of Darlington.

Mr. R. W. Jenkins, 41 year old deputy clerk of Devizes rural district council, Wiltshire, has been appointed clerk of Ware rural district council to fill the position which has been vacant since the death of Mr. E. J. Howlett in February. Mr. Jenkins will take over his duties at Ware early in August. He started his career in local government with Portslade-by-Sea urban district council in 1932 and later was assistant accountant of Sheppey rural district council, in Kent.

Miss M. E. Neervoort has been appointed a probation officer in the London service, as from June 1, last. She served as a whole-time probation officer in Nottinghamshire combined area from January 7, 1948, to July, 1956, when she resigned to take a commercial post.

RESIGNATIONS AND RETIREMENTS

Sir Douglas McNair has retired from his position as chairman of Devon quarter sessions. His successor will be Judge H. M. Pratt, who paid tribute to Sir Douglas, mentioning his long service and his experience gained as a High Court Judge in India. Judge Pratt said that, "To the discharge of his office he has brought these human qualities . . . firmness on the one hand coupled with patience and care and courtesy and humanity."

OBITUARY

Mr. Edward Williams, for 16 years chief constable of Caernarvonshire, has died at the age of 83. Mr. Williams joined the Caernarvon constabulary in 1895. A year later he joined the Metropolitan police but in 1898 he rejoined the Caernarvon force. He gained rapid promotion, becoming sergeant in 1905, superintendent in 1912 and deputy chief constable in 1921. In April, 1923, he was appointed chief constable, retiring in 1939.

Superintendent Robert Dams, head of the Newark police division, Nottinghamshire, has died at the age of 53.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

"THE LICENSING MAGISTRATES"

At question time in the Commons, Mr. D. Griffiths (Rother Valley) asked the Secretary of State for the Home Department whether, when he next circularized licensing magistrates, he would correct the misleading impression that a pamphlet, entitled "The Licensing Magistrates," a copy of which had been sent to him, which stated that it was issued to assist members of licensing committees in their important task and edited by a barrister-at-law, was issued with his authority.

The Under-Secretary of State for the Home Department, Mr. David Renton, replied that that pamphlet, which was published by the United Kingdom Alliance, contained nothing, so far as he could see, to give rise to an impression that it was issued with the authority of the Secretary of State for the Home Department. He did not therefore think that any action on his part was called for.

Mr. Griffiths asked whether Mr. Renton was aware that that document had been sent to licensing magistrates throughout England and Wales. Was he aware that on the back page the words "judicial dicta" were an inference and, possibly, an implication to licensing magistrates that the document was of an authoritative nature from either the Government or the Home Office? Might not that indication lead magistrates away from their judicial responsibilities and duties?

Mr. Renton replied that the pamphlet was written by an anonymous barrister who advocated temperance and disagreed with one of his speeches, but none of those factors need give rise for any concern. If it helped Mr. Griffiths, he emphatically said that the pamphlet had not been issued with the authority of the Home Office.

PREVENTIVE DETENTION

In reply to Mr. V. Yates (Ladywood), Mr. Renton stated that on July 9, 1958, there were in the central preventive detention prisons 15 prisoners over the age of 70 years, of whom five were over 75.

Mr. Yates asked whether the Minister was aware that about two weeks ago a man aged 78 had been sentenced to seven years' preventive detention for stealing three coats from a car. An appeal had been made because of the man's state of health and the fact that he was likely to die very soon. Would the Secretary of State for the Home Department consider whether it was reasonable to condemn those aged persons to prison for the rest of their natural lives?

Mr. Renton replied that they were, of course, a very small proportion of the total number of prisoners sentenced to preventive detention. They had to face the fact that in some of those cases it might well be the best solution for the prisoners themselves, but if Mr. Yates had particularly in mind the case of the man aged 78, and he cared to let him have full details of it, he would make sure that it was carefully looked into.

Mr. Yates then asked whether the Secretary of State had completed his review of the system of preventive detention and if he would make a statement.

Mr. Renton replied that the Secretary of State was still awaiting the completion of the research projects and would initiate a review of the system as soon as possible thereafter.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

SPECIAL ORDERS OF EXEMPTION—CHRISTMAS AND NEW YEAR

I recall attention to my letter on this subject which you printed at p. 25, *ante*. In this letter I referred to s. 107 of the Licensing Act, 1953, and the practice of granting special orders of exemption in form that each "special occasion" was the subject of a separate order (thereby attracting a separate fee in respect of each occasion) or in form that more than one "special occasion" was mentioned in a single order (thereby attracting one fee only). I mentioned that pressure was being directed to magistrates' courts to persuade them to adopt the practice of including a number of occasions in a single order: pressure supported by statistics compiled by licensed victuallers' associations. In an effort to obtain reliable information on the subject I asked all justices' clerks to write to me and I undertook, with their help, to compile disinterested figures and to make them available to you for publication.

I am gratified to have received 527 replies to my letter, informing me of the practice in magistrates' courts in 802 petty sessions areas. In 782 of these areas applications are made annually for special orders of exemption during the Christmas and New Year periods. In every case, it appears, the application is made by a solicitor instructed by the local licensed victuallers' association and although it takes the form of an application made under s. 107 of the Licensing Act, 1953, on behalf of each holder of a justices' on-licence, its intent and purpose is to secure an enlargement of permitted hours throughout the licensing district on specified days.

1. In 604 petty sessions areas all "occasions" are mentioned in a single order: such an order attracts a fee of 5*s*. in 595 cases and in the other nine cases a fee of 3*s*. is charged. In 72 of the areas mentioned in this paragraph information is given that there has occurred in the last few years a change from the former practice of regarding each day's occasion as the subject of a separate order. Additional interesting information is given by certain of my correspondents:

(i) Six justices clerks, who between them serve 20 petty sessions areas, find an absence of uniformity within their own offices: the justices of 12 of their areas include three days' occasions in a single order, the other eight do not.

(ii) In four areas not only are occasions occurring at Christmas and New Year included in a single order: also included are enlargements of permitted hours on bank holidays and in connexion with other public events held during the year.

(iii) Generally, only the special occasions of Christmas Eve, Boxing Day and New Year's Eve are included in a single order, and if other orders are granted each day's occasion is the subject of a separate order for which a separate fee is charged; but in one area up to five occasions are included in a single order and in another every occasion that falls within the period of a fortnight is included.

(iv) In one area, the inclusion of three days' occasions in a single order is restricted to licensed premises: applications by registered clubs are treated as being for separate orders attracting separate fees.

2. In 78 petty sessions areas the occasions of Christmas Eve and Boxing Day are included in one order and a separate order is granted in respect of New Year's Eve: orders so granted attract fees of 10*s*.

3. In 98 petty sessions areas the special occasions of Christmas Eve, Boxing Day and New Year's Eve are treated as separate occasions each the subject of a separate order: in 93 areas these attract fees of 15*s*. and in five areas they attract fees of 9*s*. In one area separate orders are granted, but it is customary to remit the fee chargeable in respect of one of them: thus, "the applicant gets three dates for the price of two, or sometimes four dates for the price of three."

4. In two areas no fees are collected.

Yours faithfully,
J. WHITESIDE.

The Court House,
Exeter.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

LICENSING

The details which are given in P.P. 5 at p. 440, *ante*, unmistakably relate the facts to an application which my firm made at the —— brewster sessions this year.

May I say at once that in so far as your "answer" relates to matters of law I agree, without qualification, what you say. It is with that part of your "answer" in which you say that ". . . the result of such a post card poll would have little evidential value" that I venture to quarrel.

Those of us who practise to any extent before benches of licensing justices will, for the most part, agree that petitions and the like endeavours to represent local opinion are not worth the paper they are written on. But it does sometimes occur, and this application was just such an instance, that the applicants go to great trouble, and no little expense, to bring before a bench of justices evidence in some written form obtained and presented with such scrupulous care and fairness as to show the trend of local opinion upon a specific matter, not only in more manageable form but, I believe, more convincingly than would the cumbersome procedure of the actual appearance in court of 3,185 witnesses who would have spoken in favour of a project, 916 who would have spoken against it and 4,275 who would have expressed themselves as indifferent: these witnesses constituting the "some 8,000" to whom your correspondent refers.

Yours faithfully,
S. A. BLOCK.

Crossman, Block & Co.,
16 Theobald's Road,
Gray's Inn, W.C.1.

[We take note of our correspondent's comment and suggest that his letter confirms our opinion that a post card poll has little evidential value. For instance, the result of the poll does not disclose as a matter of fact that 4,275 people are indifferent to anything other than taking part in a post card poll: it is not evidence but argument which makes the result of the poll have the appearance of being favourable to the applicant's case.

We make no comment on our correspondent's suggestion that as an alternative to accepting the figures produced by the poll the licensing justices could have been required to hear evidence from some thousands of witnesses—we think that our correspondent made the suggestion with his tongue in his cheek.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

STANDING ORDERS AT COMMON LAW

At P.P. 6 on p. 16, *ante*, it is stated that "standing orders may be considered *leges imperfectae* analogous to rules of international law which are normally obeyed though not supported by sanctions. . . . If a meeting accepted a motion of which notice had not been given although it should have been, the High Court (we think) would be reluctant to say that the decision on the motion was ineffective unless (perhaps) some person were shown to be adversely affected."

In the light of the authority of *Machell* v. *Nevinson* (1724) 2 Ld. Raym. 1355, it is suggested with respect that this view cannot be supported. In that case it was argued that there was a right in the common council to elect without the concurrence of the mayor, and to fill up the vacancies in their body upon the election of the mayor, but no instance was given that the members ever proceeded to an election without the direction of the mayor; and it was held that where the invariable usage of the corporation (which was by prescription) has been never to proceed to a corporate act except upon due notice being given for the purpose, an act done without such notice was void.

Yours faithfully,
EDWARD S. WALKER.

135 Walkwood Road,
Hunt End,
Redditch, Worcs.

[The decision of 1724 related to a custom in a borough, which had in the previous century been embodied in a resolution of the

governing body. Assuming that the Divisional Court today would treat that decision as applying to standing orders, expressly authorized by statute, of a modern corporation (or its governing body) created or regulated by statute, it does not follow that the same answer would be given in respect of every departure from such standing orders. The query at p. 16 was so general in terms that we did not think any single answer would be complete; we pointed out that standing orders are of more than one type. We were careful to say: "unless (perhaps) some person were shown to be adversely affected," and our answer is therefore not contrary to *Machell's* case, *supra*, which arose from an irregular election to corporate office. So did *Musgrave* v. *Nevinson*, which is reported by Lord Raymond at p. 1368 next after *Machell's* case, though it had been decided earlier. In *Machell's* case the electoral meeting had not been convened in the customary manner; in *Musgrave's* case the meeting was presided over by the mayor, as custom prescribed, but it was held in the wrong place, and without any proper summons. The Court mentioned a *Carlisle* case, also relating to corporate office, which had decided that consent of the whole body to an irregularity of form would not cure failure (in the summons to a meeting) to specify the challenged item of business. This is in line with our answer at p. 16 where, in addition to speaking of resolutions affecting persons, we suggested that a payment might be held illegal (even if resolved upon by the whole council) if notice required by standing orders had not been given. Our opinion will thus be seen to be consistent at all points with the decisions in Lord Raymond, although we do not regard those decisions as necessarily governing all cases which may now arise. —*Ed., J.P. and L.G.R.*]

REVIEWS

The Law of Copyright Supplement. By J. P. Eddy, assisted by E. Roydhouse. London: Butterworth & Co. (Publishers) Ltd. Price 7s.

This is a supplement to the learned author's *Law of Copyright*, and brings it up to date as at November 1, 1957. Apart from a noter-up on the usual lines, it sets out the text of the statutory instruments made under the Copyright Act, 1956. The noter-up comprises full descriptive notes upon the text of the various conventions which have come into force since the main work appeared, as well as those provisions of the Copyright Act, 1956, which had not been brought into force when the main work was published in April, 1957. It may be that for many of our own readers copyright is not in the ordinary day's work. Some of them, however, have become unexpectedly involved in the intricacies of copyright law. We have, for example, had to advise from time to time about the position of local authorities who provided entertainments, or wished for their own internal purposes to make and distribute extracts from copyright documents. These readers will probably have found it desirable already to provide themselves with the main work, and they will naturally obtain the supplement if they have not already done so. The main work and supplement are not costly by the standards of the present day: together they cost £2 7*s.* net, and they are a good investment for any lawyer, in case he is unexpectedly confronted with a copyright problem.

The Child and the Social Services, by D. V. Donnison and Mary Stewart. The Fabian Society. 3s.

This pamphlet is based on a memorandum submitted to the Departmental Committee appointed in 1956 by the Home Secretary under the chairmanship of Viscount Ingleby to consider the working of the law relating to the procedure of juvenile courts and other matters. Special attention is given in the pamphlet to the services available for the family as a whole unit and it is shown that co-ordination of the services is not enough. The need for a new comprehensive family service is urged, to be administered by the local authority under a new family committee to replace the existing children's committee.

Whilst appreciating the value of the juvenile court in providing an opportunity for the social workers who may be concerned with a family to meet and exchange views it is felt that there are defects in the existing system. Many of these courts are handicapped by the unsuitability of the premises in which they work. It is considered that the present system by which children aged eight and over may be found guilty of crimes leads to many anomalies. For instance, owing to the upper age limit of 17, the juvenile courts are deprived of helping those who are still regarded as juveniles in other walks of life.

It is recommended that the age of criminal responsibility should be raised to 15; the upper age limit for appearance before the juvenile court should be raised to 18; and that juvenile courts should have power to commit direct to borstal, juveniles aged 16 and 17. It is also recommended that for those under 15, the oath should be replaced by a simple promise to speak the truth; that the procedure relating to evidence given by a juvenile defendant should be simplified; and that it should be obligatory for a juvenile court to read recent probation officer and psychiatric reports before making a final order which results in the removal of a child from his home. In order to carry out their proposals it is suggested by the authors of the pamphlet that bodies, to be known as case committees, should be appointed with powers to deal with certain categories of children who now appear before the juvenile court under criminal or civil proceedings.

The memorandum submitted to the Ingleby Committee was prepared by a small group of Fabians. Although there must be differences of opinion amongst those who are concerned with the problems generally, these differences need not be on party political lines. Many of the suggestions of the Fabian Group would be supported by others who have no political leaning in that direction. Their recommendations merit careful consideration both by the Ingleby Committee and by those who are responsible for the administration of the existing system.

Teach Them to Live. By Frances Banks. London: Max Parrish. Price 30s. net.

This is a book about education in prisons. It tells with a wealth of informative detail, and a delightful good humour, a story which deserves the publicity of a well-produced volume such as this. The author is a pioneer in the field, having done notable work in the education of prisoners at Maidstone, but she is far too modest to claim to be more than a member of a team. What a team it is! Here is a group of devoted people, giving time and energy for awkward journeys to lecture and demonstrate to criminals who, in many cases, have to be taught even to read and write.

They can rejoice in the fruits that their labours are already yielding. No longer is the prison population cut off from the stream of outside events; no longer is it deprived of news, views, and the opportunity to express personal opinion. Indeed, group therapy, one of the most important of the activities dealt with in these pages, operates almost entirely by securing the frank and uninhibited co-operation of the prisoners. So they are prepared for the vital moment when, upon release from custody, they find themselves face to face with the demands of daily life, and, above all, the need for personal decisions on a host of problems.

Miss Banks pays handsome tribute to the early prison visitors, most notably and touchingly to the saintly Miss Martin of Great Yarmouth. If you do not know about her, give yourself the privilege of meeting her in this book—and many more who followed in her brave and lonely footsteps. This is true social service, and it is still gathering ever greater impulse. Now that we can count on so much official support for constructive activities in prison education, it is worth recalling that this very co-operation has been won, in the first place, by the sheer determination of voluntary workers.

Read this book. Tell your friends about it. Above all, take pride in the way in which, step by step, the outlook on the prisoner is changing. The essence of the account so ably rendered by Miss Banks is that prisoners are now regarded as citizens, not as outcasts. It is a change in attitude of far-reaching implications. As presented here it has nothing to do with the false sentimentality or the phoney psychology sometimes met with in the sphere of penology. Miss Banks is a realist. That is her strength. She is also a lover of humanity. This is her inspiration.

SHORTER NOTICES

Children Services Statistics, 1956–57.

This, in the same form as other publications of the Society of County Treasurers and the I.M.T.A., consists of statistical details supplied by each of the authorities exercising powers relating to children's services.

POWER AND PRIVILEGE

(*Concluded from p. 473, ante*)

When, in the autumn of 1764, John Wilkes remained abroad rather than stand his trial on the charge of seditious libel (already prejudged by the resolution of a subservient House of Commons), sentence of outlawry was pronounced against him. In 1768, when public indignation at the corruption of political life was at its height, he staked all on a gambler's throw. Back in England, he stood for re-election to the House of Commons, and was returned as member for Middlesex, with a large majority. With his reputation as an opponent of corruption, privilege and arbitrary power, he already enjoyed enormous popularity; when, on surrendering to his outlawry, he was sentenced (*R.* v. *Wilkes* (1769) 19 St. Tr. 1075) to a £500 fine and two years' imprisonment, crowds regularly assembled, to pay court to him, outside the prison gates. On their dispersal (not without bloodshed) by Scottish troops, Wilkes published, in the *St. James's Chronicle*, the Government's secret orders to the soldiery, together with some sarcastic comments of his own. In a characteristically defiant gesture, he put before the Commons a petition alleging the illegality of all the proceedings against him. The result was a second expulsion from an angry House; but the arbitrary tyranny of his enemies brought him financial and political backing. Rich admirers subscribed to his "Society of the Supporters of the Bill of Rights"; in February, and again in March, 1769, he was re-elected for Middlesex, and subsequently expelled, on each occasion, by the House. At his fourth election, in April, he secured a vote four times the size of his opponent's; but the outraged Commons declared that the latter "ought to have been returned," and arbitrarily seated him in Wilkes's rightful place.

These manifest abuses of power served merely to increase the popularity of this rebellious spirit, and gave birth to the slogan "Wilkes and Liberty." A new "Wilkite" party was formed, standing for radical parliamentary reform, the suppression of the rotten boroughs, enfranchisement of the "lower orders," and the protection of individual liberty against ministerial tyranny and parliamentary abuse of power. "The House of Commons" it proclaimed, "does not represent the people." So long as the Commons remained closed to him, Wilkes fought his way to high office in the City of London, becoming successively sheriff, alderman, and at last lord mayor. In the *Wheble* case he used the City's judicial powers to defeat the tactics of the Commons, which had arbitrarily forbidden the publication of its debates. The City magistrates released the printers arrested by order of the House, and sent its functionary to prison for unlawfully arresting them.

Eventually, in 1774, Wilkes took his seat in the Commons; and almost at once presented a Bill for its radical reform. He championed the cause of the American Revolutionists, and delivered in the Commons, in the midst of the war, 10 set speeches advocating the cessation of hostilities. But the Gordon Riots of 1780, directed against the Roman Catholics, proved to be his Achilles' heel. The "lower orders," who had so long admired him, were engaged in religious persecution and mob violence—two things he equally and sincerely detested. Characteristically, he had no hesitation in sacrificing expediency to principle, preferring to lose his political allies rather than to renounce consistency and reason. As a city magistrate he took a prominent part in crushing the disturbances, sentencing many of his old supporters to gaol. From this time his influence began to decline; Radicals preferred to support the new "Economical Reform" movement of the Yorkshire M.P.s, looking forward to triennial Parliaments, a redistribution of seats and even universal suffrage.

Wilkes's last political *coup* was in 1782, when he induced the Commons to expunge from its journals all record of his expulsions. In 1790 he retired from active life, and died, at the age of 70, in 1797. He died insolvent—a matter of which he was apparently quite unaware—although, in that age of general corruption, he had dealt much with public money without ever once tainting his hands.

Wilkes's strikingly ugly features—squint and all—have been immortalized in William Hogarth's famous cartoon. It has been said of him that "he never did a good thing without giving a bad reason." His tongue was cynical, his conversation coarse and indecent. Canvassing on one occasion, he was told by an indignant elector—"I would sooner vote for the Devil than for Wilkes!" Quick as a rapier-thrust came the retort—"And if your friend is not standing?" It was John Montagu, fourth Earl of Sandwich (once his associate among the Medmenham Monks), turned respectable in later life who, as a Principal Secretary of State, took a leading part in Wilkes's persecution. The noble lord (whose reputation for corruption and incapacity is almost unique in the records of British politics) once referred, with a sneer, to Wilkes's philandering propensities, and expressed uncertainty whether he would die on the gallows or of venereal disease. "That depends, my lord," was the reply, "upon whether I embrace your principles or your mistress."

Such was this strange character—fearless, forthright and incorruptible; an agitator and a demagogue, but also a reformer and a fighter for the under-privileged. Could Wilkes but read the recent controversy on the Act of 1770—which was passed into law at the very height of his struggle—he would have, no doubt, some pungent observations to make.

A.L.P.

ADDITIONS TO COMMISSIONS

BEDFORD

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Mrs. Barbara Dean, Stockhull House, Cotheridge, Worcester.
Geoffrey James Dorrell, Horse Hill, Callow End, Worcester.
Stanley Herbert Marshall, 232 Malvern Road, Worcester.
Gershom Richardson Massey, 48 Mortlake Avenue, Worcester.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Adoption Act, 1950—*Mother's consent dispensed with—Appeal by Case Stated—Service of notice of appeal on respondent to whom a serial number was assigned.*

The juvenile court for my division recently made an adoption order, and in connexion therewith they dispensed with the consent of the mother of the infant under s. 3 (1) (*c*) of the Adoption Act, 1950, as being unreasonably withheld.

The justices have now been asked to state a case.

In the original application the applicants asked that their identity should be kept confidential.

The question now arises as to how it is possible (if it is still necessary) to keep the identity of the applicants for the adoption order confidential, in view of the fact that they will have to be made respondents in the Case Stated, and the case served upon them by the mother's solicitors. I cannot find any authority on this matter, and I shall be glad to know whether it is your opinion that when the matter has got to this stage, there is no way by which the applicants' identity can be kept from the mother of the infant. Q. NAMTO.

Answer.

Where it is shown to the satisfaction of the court that the applicant for an adoption order desires that his identity should be kept confidential, the proceedings must by r. 12 of the Adoption of Children (Summary Jurisdiction) Rules, 1949 and 1952, be conducted with a view to securing that he is not seen by or made known to any respondent. Although the appeal by stated case is subsequent to the proceedings we are of opinion that every effort should be made to prevent the applicant's identity from becoming known to the mother. There would appear to be no reason why the order should not be referred to in the stated case by the serial number assigned under r. 2, *ibid.*, and when the appellant received the case, application might be made under the Rules of the Supreme Court to the court or a Judge for directions as to the manner of service. If the court or the Judge so directed service might be effected by the person who acted as guardian *ad litem*, or in some other manner, without disclosing to the mother the identity of the applicants.

2.—Children and Young Persons—*More than one offence proved—All dealt with in the same way—Making out one document to cover all offences.*

At a juvenile court it often happens that one child is dealt with for more than one offence in the same way, *e.g.* (*a*) approved school order for more than one offence, or (*b*) remand home as punishment for more than one offence, or (*c*) remand home on remand pending inquiries after conviction for more than one offence, (*d*) probation order for more than one offence.

Will you please advise if one order can be made out (setting out each offence in the one form) or whether a separate form of order must be made out for each offence. When there are four or five offences (as sometimes happens) and possibly two or three offenders are treated in the same way, there is a large amount of paper work required at very short notice to enable the offender or offenders to be taken to the approved school or remand homes, and it is much more convenient to make out one form only for each offender if that is permissible. (There must of course be two or more convictions and sentences and we are only discussing the actual orders drawn up and signed by a justice.) MOCOR.

Answer.

We think that if a strict view is taken there should be one document for each offence, but as a matter of practice and convenience we believe that the various offences are often set out in one document. We have not heard of such a document's being challenged on the ground of duplicity.

As is pointed out in the question it is essential that a full and correct entry be made in the court register in respect of each offence. If a "conviction" has to be drawn up there must be a separate one for each offence.

3.—Criminal Law—*Larceny of dog—Restitution—Larceny Act, 1861, s. 106—Police Property Act, 1879.*

X steals a dog (his first offence) belonging to Y, and is convicted of the offence. The Larceny Act, 1861, s. 106, provides for compensation, but I can find no mention of restitution.

(*a*) How does the real owner of the dog get it back?

(*b*) Am I right in assuming that the provisions of the Police Property Act, 1899, would be applicable to this case?

(*c*) Does the obtaining of a "disclaimer" from the offender obviate the need for any further action on the part of the owner? FINCOL.

Answer.

(*a*) The dog remains the property of the owner who can sue the thief for its recovery. If the thief is prosecuted to conviction, the ownership of the dog revests in the owner even if the sale has taken place in market overt. In practice, we think it doubtful whether the thief or anyone to whom he had sold the dog would contest the owner's rights.

(*b*) Since s. 1 (1) of the Police Property Act, 1879, mentions property which has come into the hands of the police under (*inter alia*) s. 103 of the Larceny Act, 1861, it seems that "property" would include a dog and that the provisions of the Act would be applicable.

(*c*) If the offender disclaims all interest in the dog, we think that no further action on the part of the owner would be required.

4.—Dogs Fouling Footways.

I have read with interest your editorial note on this topic at p. 282.

I am particularly interested in your reference to the most recent version of the byelaw imposing a penalty on the owner of the dog if no person is in charge of the animal. This provision does not appear in the current series of model byelaws and it does, of course, make all the difference between having a byelaw which is workable and one which is virtually a dead letter.

I shall be most obliged if you can tell me the name of the authority which has succeeded in getting confirmation of a byelaw in the form mentioned by you. CORAM.

Answer.

Our copy of the model byelaw about dogs fouling footways reads as follows:

1. No person being in charge of a dog shall allow the dog to foul the footway of any street or public place by depositing its excrement thereon. Provided that a person shall not be liable to be convicted of an offence against this byelaw if he satisfies the court that the fouling of the footway by the dog was not due to culpable neglect or default on his part.

2. For the purposes of this byelaw the owner of the dog shall be deemed to be in charge thereof, unless the court is satisfied that at the time when the dog fouled the footway it had been placed in or taken into the charge of some other person.

The copy in our possession bears the imprint November, 1952. The same wording is reproduced in *Knight's Annotated Model Byelaws* (edn. of 1957), the preface of which, by Mr. A. N. C. Shelley, barrister-at-law, is dated December, 1956. It does not seem likely that the Home Office will in the course of 1957–8 have gone back to any earlier form of the model and—whilst we regret that we have ourselves no record of a byelaw confirmed since 1952—we cannot help thinking that your copy of the model series may be an older version.

5.—Gaming—*Small Lotteries and Gaming Act, 1956—Small gaming party.*

Would you give me your opinion upon the following summary of the conditions upon which small gaming parties are permitted by s. 4 of the Small Lotteries and Gaming Act, 1956.

The Small Lotteries and Gaming Act, 1956, permits any entertainment at which games of chance, or of chance and skill combined, are played if:

(i) the entertainment is promoted in Great Britain;

(ii) it is for raising money to be applied for purposes other than purposes of private gain;

(iii) not more than one payment (whether by way of entrance fee or stake or otherwise) is made by each player in respect of *all* games played at the entertainment, and no such payment exceeds 5*s.*;

(iv) not more than one distribution of prizes or awards is made in respect of *all* games played at the entertainment, and the total

value of *all* prizes and awards distributed in respect of such game does not exceed £20 ;

(v) the whole of the proceeds of such payments as are mentioned in para. (iii), after deducting sums lawfully appropriated on account of expenses or for the provision of prizes or awards in respect of the games, are applied for the purposes other than purposes of private gain ; and

(vi) the amount of the expenses mentioned in para. (v) are the reasonable costs of the facilities provided for the purposes of the games.

The £20 in para. (iv) refers to the *total value* of the prizes and not the amount *expended* on prizes. It is not, therefore, lawful to give as prizes expensive articles which may have been presented.

Where two or more entertainments are promoted on the same premises by the same persons, on the same day, they are deemed to be a single entertainment and no participant should be charged more than 5*s*., in total, as entrance fee. The total prize money must not exceed £20.

If there is a series of entertainments, each entertainment being held on a separate day, culminating in a final entertainment, the participants at which took part in the games played at one of the earlier entertainments, the charge of 5*s*. may be made—and prizes to the total of £20 may be distributed—at each entertainment. At the final entertainment the value of the prizes may be £100. Such a series of entertainments may, or may not, be a knock-out competition. FATOR.

Answer.

We agree with our correspondent's summary of s. 4 of the Act, with the reservation that we are not sure what he means by the reference to the total value of the prizes and the amount expended on prizes. We assume he is thinking of the case where prizes are obtained, *e.g.*, at the wholesale price. If this be so, we agree that the £20 refers to the total value of the prizes and not to the amount spent in buying them. In addition, we assume that the "expensive articles" to which he refers means articles over a total value of £20, as we can see nothing in the section which precludes prizes being presented provided their total value comes within the limits specified.

6.—Highway—*Obstruction—Hackney carriage stand—Parking of private cars.*

Is it an offence to park a private car (*i.e.*, not a licensed hackney carriage) on a hackney carriage stand in the public highway, appointed by byelaws made under s. 68 of the Town Police Clauses Act, 1847 ? If so, under what Act and what is the penalty ? If it is not an offence, how can a local authority prevent this parking ? A. DELVO.

Answer.

This is wilful obstruction within the ninth paragraph in s. 28 of the Town Police Clauses Act, 1847 (the latter part of the paragraph), which does not speak of obstructing free passage, as does s. 72 of the Highway Act, 1835. In our opinion it is also an offence under this latter section, because the public are entitled to drive or walk over the cab rank when it is not in use as such, and the cabmen are entitled to free passage along it when ranking. An offence is also committed against the Motor Vehicles (Construction and Use) Regulations, 1955: *see Solomon* v. *Durbridge* (1956) 120 J.P. 231. In that case the defendant unsuccessfully argued, *inter alia*, that he was not causing an obstruction because he was in a line of cars ; the Lord Chief Justice's remarks seem applicable.

7.—Landlord and Tenant—*Employee's rent paid by employer—Effect on position of tenant.*

In 1936 a police officer obtained a lease on a house for 10 years but in 1946 it has been allowed to continue. Since 1938 the police authority has paid the rent direct to the landlord and the rates to the local council. As the police authority have paid the rent, etc., in this way and the original lease has expired, is the tenancy deemed to have passed to the police authority ? PUTIN.

Answer.

No, in our opinion, if the landlord has continued to treat the police officer as tenant with the police authority paying the rent on the tenant's behalf.

8.—Landlord and Tenant Act, 1954—*Long leaseholds—New leases substituted without statutory notices.*

Without questioning the answer to P.P. 9 on p. 424 where the landlord is a private person, company, etc., I should like to know whether the same applies where the landlord is a local authority, development corporation, a housing association, or trust mentioned in s. 33 of the Housing Repairs and Rents Act, 1954. This Act and the Landlord and Tenant Act, 1954, were before Parliament at the same time and became law on the same day. It is suggested that s. 33 of the Housing Repairs and Rents Act, 1954, operates upon s. 2 (1) of the Landlord and Tenant Act, 1954, in such a way as to make part I thereof inapplicable to a local authority's property, even though let by the local authority many years ago upon a long lease at a low rent, outside the Housing Acts. Or do you consider that the local authority's ownership is not a "relevant matter" within the parenthesis in s. 2 (1) of the Landlord and Tenant Act, 1954 ? BEWOP.

Answer.

We had construed the parenthesis as being addressed to other matters than the identity of the lessor: *cp.* the note to para. 410 on p. 547 of *Hill and Redman*, edn. of 1955. On reconsideration however, notwithstanding that *Hill and Redman* nowhere mentions s. 33 of the Housing Repairs and Rents Act, when discussing at some length the meaning of the expression "landlord" in part I of the Landlord and Tenant Act, we cannot resist the conclusion that s. 33 of the Housing Repairs and Rents Act has the effect suggested, and accordingly that the property mentioned in P.P. 9 at p. 424 is outside part I of the other Act.

9.—Licensing—*Special order of exemption—Grant in respect of premises subject to restrictive conditions on licence.*

An hotel proprietor is the holder of a restricted "on licence" and the restrictions governing the sale and consumption of intoxicating liquor are as follows:

Restricted to: (*a*) *bona fide* residents of the hotel ;

(*b*) *bona fide* visitors staying at the hotel ;

(*c*) persons, other than residents and visitors, taking a main meal thereat.

The monopoly value of this licence is several thousand pounds less than comparable premises in the district where full on-licences exist.

The hotelier made an application to the justices for a special order of exemption under s. 107 of the Licensing Act, 1953, relating to permitted hours in respect of a dinner dance for drinking until 1 *a.m.* and the application was contested on the following grounds:

1. that a special order of exemption under s. 107 can only relate to permitted hours on a special occasion or occasions and in no way provides for alteration or variation of the conditions of the licence ;

2. that because of the restrictive conditions attached to the licence, drinking could not take place by non-residents unless the dinner extended until 1 *a.m.* ;

3. that the sale of intoxicating liquor at a dance was not within the terms of the licence.

The justices granted the application for exemption until 12 midnight. In announcing this decision, the chairman stated that the court were not prepared to interpret condition (*c*).

An opinion would be appreciated as to whether you consider that persons attending the hotel, who are in category (*c*) can be served with drinks after the completion of their main meal.

If the answer is "No," do you consider that an application should be granted for special exemption under s. 107 in respect of a dinner/dance extending to 1 *a.m.* when it can only apply to categories (*a*) and (*b*), although persons of category (*c*) will also be present ? ORNAN.

Answer.

We answered a similar question at 118 J.P.N. 95, 240.

We agree with our correspondent that a special order of exemption has the effect merely of enlarging the permitted hours and does not operate to free the licence holder from the burden of restrictive conditions attached to the licence.

Our correspondent's question points again to the importance of ensuring that conditions attaching to a licence shall be so drafted as to be free from ambiguity. If our correspondent accurately reproduces restriction (*c*), both in wording and in punctuation, its literal meaning obviously does not correspond with what was intended by its draftsman. "Persons, other than residents and visitors taking a main meal thereat" adequately describes casual callers who may seek only to dance. If the literal sense of the condition is changed by inserting a comma between "visitors" and "taking" the condition is capable of the construction "Persons who take a main meal (*i.e.*, dinner) at the hotel, although they are neither residents nor visitors staying there, may avail themselves of facilities for drinking during permitted hours."

We are not surprised that the chairman of the bench stated that the court was not prepared to interpret condition (*c*). In our opinion, persons attending the hotel may be served with drinks after their meal is finished and during permitted hours as extended by the special order of exemption.

10.—Magistrates—*Practice and procedure—Committal to quarter sessions for sentence—Defendant granted bail pending appeal against conviction—Failure to appear—Power to arrest him to appear for sentence.*

Section 37 (1) of the Criminal Justice Act, 1948, authorizes the High Court to bail a person who has given notice of appeal to a court of quarter sessions and subs. (4) provides that rules may be made authorizing the re-committal of persons released from custody.

A note in *Stone* refers to Rules of the Supreme Court (Criminal Proceedings), 1949, but para. 9 of these rules which authorizes a magistrate to issue process for enforcing the decision in respect of which appeal or application for *certiorari* was brought refers only to cases of appeals to the High Court, and there is no reference to appeals to quarter sessions.

A case illustrating the point is as follows:

A, having been committed for sentence to quarter sessions and having appealed against his conviction, obtained bail from a Judge and failed to appear, and the recorder instructed the police to apply to the justices for a warrant. What is the authority for the grant of such a warrant, or for A's re-committal? The recorder was a deputy and as such not himself a justice. It was subsequently arranged that A should be apprehended under s. 65 of the Criminal Justice Act, 1948, which provides that any person who, having been committed to a prison, is unlawfully at large may be arrested by a constable without warrant and taken to the place in which he is required in accordance with law to be detained, and the recorder will sign an order to the governor of the prison reciting the facts and directing the governor to detain A until the next quarter sessions.

GARMO.

Answer.

We respectfully agree with the solution proposed for this somewhat difficult situation. The wording of s. 65 of the Criminal Justice Act, 1948, seems to cover the situation since A was committed to a prison by the justices before bail was granted and he is now unlawfully at large since he has lost his appeal by default.

11.—Magistrates—*Practice and procedure—Indictable offence—Defendant does not consent to summary trial—Request later to be tried summarily.*

An adult appears before a magistrates' court charged with an indictable offence to which s. 19 of the Magistrates' Courts Act, 1952, applies. During the inquiry into the offence the court, after having had regard to representations made by the prosecutor and to the nature of the case . . . , proceeds with a view to summary trial. The accused, however, does not consent to be tried summarily. At a later stage of the inquiry the accused intimates that he has changed his mind and would like to be dealt with summarily.

I shall be glad if you will give me your opinion on the following points?

1. Can the magistrates accede to this request?
2. Must the magistrates accede to this request?
3. Should the court again go through the procedure outlined in ss. 3 and 4 of s. 19 of the Act or should the accused be merely asked to plead?

KANON.

Answer.

1. Yes.
2. No, but unless new facts have come to light since they offered to try the case summarily it seems unreasonable not to accede.
3. The court should remind the accused that the position was previously explained to him and he should be asked whether he now consents to summary trial and what his plea is.

12.—National Assistance—*Recipient with capital—Mode of recovery.*

X, who is 71 years of age, is in part III accommodation under s. 21 of the National Assistance Act, 1948.

In addition to an old age pension X has assets consisting of over £500 in stocks and shares, and also a current bank account. She has been assessed to pay the full maintenance charge but refuses to pay more than part of the assessment. There is now due to the council nearly £80 arrears of maintenance, and the courses of action possible to obtain payment of the arrears seem to be recovery of the sum owing summarily as a civil debt within three years, under s. 56 of the 1948 Act, or alternatively a default summons and a judgment order in the county court. I am not sure that the former course is suitable in this case, as distress presumably cannot be levied against stocks and shares or a bank account, and needless to say imprisonment in default is out of the question. The only advantage of taking this course of action might be that a bankruptcy notice could be founded on an order for the recovery of the money as a civil debt. The second course of action seems to offer better prospects since, if payment is not made after judgment is obtained one could obtain a garnishee order against the bank account, but I am doubtful if the order could be made to apply to stocks and shares.

If X made a voluntary disposition of her assets to avoid her assessment, do you agree that steps to recover the money could be taken by making X bankrupt and having the gift set aside as void against the trustee in bankruptcy?

Your advice would be appreciated, in particular on the vulnerability of stocks and shares to court orders, either a court of summary jurisdiction or the county court, and whether there is any way of obtaining a charging order against X's stocks and shares.

BEDUM.

Answer.

Proceedings before justices are likely to be ineffective for the reasons given in the query. Bankruptcy proceedings against such a person seem incongruous (and would surely tend to produce adverse comment), though we agree generally with your view of the legal position. County court proceedings are therefore the best course. We suppose that the amount in the current bank account is relatively small, so that recourse against the stocks and shares will be necessary, sooner or later. The county court cannot make a charging order upon these, but its judgment can be removed to the High Court for this purpose.

13.—Road Traffic Acts—*Dangerous driving and failing to stop in a borough—On same journey driving whilst drunk in surrounding county—Trial of former offences by county justices?*

A man drives a motor car dangerously in a *borough* and is involved in an accident at which he fails to stop. He then continues his journey into the adjoining county. When about 10 miles away from the borough he is arrested for driving whilst under the influence of drink. He is due to appear before the county justices for the latter offence.

Is it legally possible for the two offences committed in the borough to be dealt with by the county justices when they try the man for driving under the influence of drink?

If so, will you please quote any authority. I would add that there is no question of the man having driven dangerously in the county. Therefore, there is some doubt as to whether the offences could be regarded as "continuing" ones.

JONOR.

Answer.

We assume for the purposes of our answer that the jurisdiction of the borough justices in this borough is exclusive of that of the county justices. If that be so, the only way in which the county justices can have jurisdiction to deal with the dangerous driving charge is for that charge to be preferred when the defendant is before them on the s. 15 charge, the s. 11 charge being started, under s. 18 (1) of the Magistrates' Courts Act, 1952, as an indictable offence. The jurisdiction of the county justices to do this is given by s. 2 (3) of the Act of 1952. If the s. 11 case is so begun, then, by s. 2 (4), *ibid.*, the county justices (subject to the defendant's right under s. 25 of the Act of 1952 to claim trial by jury) may proceed subsequently to summary trial by virtue of s. 18 (3) of that Act.

The offence of failing to stop after an accident is purely a summary one and cannot be tried by the county justices. The s. 15 offence and the other two offences appear on the facts to be entirely separate and distinct, and no question of a continuing offence arises.

14.—Water Rate—*Recovery where summons combined with summons for general rate.*

Your answer to P.P. 8 at 122 J.P.N. 278 did not say (because the question was not asked) whether in the circumstances outlined a distress warrant could be issued in the first instance to enforce the payment of water rate. My own view is that the County Council Act, to which reference is made, does not specifically authorize the recovery of water rate in the same manner as general rate, and water rate will still have to be recovered as a civil debt. Do you share this view?

BELMA.

Answer.

We agree. The special mode of enforcing the general rate cannot be used without express statutory authority.